

ALBERT WHITEHURST

IBLA 82-522

Decided January 19, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. U 49894.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

BLM may properly reject a first drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

APPEARANCES: Albert Whitehurst, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Albert Whitehurst has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 1, 1982, rejecting his simultaneous oil and gas lease application, U 49894. Appellant's application was drawn with first priority for parcel UT 1 in the September 1981 simultaneous oil and gas lease drawing.

BLM rejected appellant's application because appellant had failed to comply with 43 CFR 3102.2-6 which requires disclosure of any agreement or understanding with an agent where the applicant received the assistance of that agent in connection with the simultaneous filing and the agent is in the business of providing assistance. 1/ Appellant's application was filed on

1/ On Feb. 26, 1982, the Department published interim final regulations which revised Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending

his behalf by Stewart S. Golden, Independent Oil Corporation (Independent), as agent.

BLM rejected the application "inasmuch as no authorization or agreement was submitted with the application as required in 43 CFR 3102.2-6; nor was reference made to a qualification serial number on the application as allowed in 43 CFR 3102.2-1(c)."

[1] The Departmental regulations provide three alternative methods of complying with the requirement that an applicant notify BLM of any agreement or understanding with an agent. Arthur H. Kuether, 65 IBLA 184 (1982). Under 43 CFR 3102.2-6(a), an applicant is required to submit with his lease application

a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

In the alternative, under 43 CFR 3102.2-6(b), an applicant may submit with his lease application a uniform agreement entered into between several applicants and an agent. Finally, under 43 CFR 3102.2-1(c), an applicant may place evidence of agency qualifications on file and make reference in future simultaneous filings, by assigned serial number, to such evidence.

In this statement of reasons for appeal, appellant contends that an "Attorney-in-Fact" form "authorizing his agent to participate in the simultaneous filing system was completed and sent to Independent in July 1981," and "was duly filed with Mr. Bill Norton of the Colorado BLM office prior to the September 1981 simultaneous oil and gas lease drawings in Utah."

Appellant's allegations, however, do not indicate compliance with the applicable regulations. Documents filed in the Colorado State Office could not possibly represent compliance with either 43 CFR 3102.2-6(a) or (b) insofar as filings in the Utah State Office is concerned, since those regulations require that the filings accompany the lease applications. See Marilyn S. Watson, 67 IBLA 67 (1982). Assuming that it was the intent of Independent to open a qualifications file in the Colorado State Office pursuant to 43 CFR 3102.2-1(c), Independent was required to affix the assigned qualification number to any filing made. Zappia Exploration Group, 60 IBLA 336 (1981). This it did not do. BLM properly rejected appellant's application.

_____ matter where it benefits the affected party to do so. See James E. Strong, 54 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second and third priority applicants.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

